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REPORTS

NOTES OF THE WEEK

Public Hearings by Examining Justices

We recently called attention to a case which illustrated the possible value of conducting the proceedings of examining justices in public, but we have never been blind to the disadvantages that attach to public hearing when those proceedings excite widespread interest and are fully reported and much discussed.

The matter was the subject of important observations by Devlin, J., at the trial of Dr. Adams at the Central Criminal Court, which ended in the acquittal on a charge of murder. These observations had the added weight of the approval and authority of the Lord Chief Justice.

The learned Judge referred to the discussion that had been taking place on this question, and pointed out that there had always been power to hold secret hearings and that the power had been re-enacted in the Magistrates' Courts Act, 1952. Without seriously criticising the committing magistrates, he expressed the opinion that it would have been wiser in this case if these preliminary proceedings before the magistrates had been held in private, because of the widespread reports and discussions the proceedings had produced. It was likely that those who became members of the jury would have read the reports. He recognized that the justices had had a difficult decision to take and they were following what had become an almost universal practice of holding these proceedings in public. Nor did he make any criticism of the general rule that except for a good and special reason it is best that all stages of the criminal processes should be conducted in open court as part of our tradition, but Parliament gave a discretion which was intended to be used. It would be unfortunate if proceedings laid down for the benefit of the accused might turn out prejudicial to his interest.

As we understand the matter, it is not intended that examining justices should sit in private in all circumstances, but that they should pay due attention to any application made to them to sit otherwise than in open court. Probably such applications will not prove infrequent, but when it is suggested that because of widespread public interest or local feeling a hearing in public might prejudice the interest of the accused, the justices should not have any doubts about their power and should not be afraid to exercise it in what seems to them a proper case.

Murder by Shooting

Comment on one effect of the Homicide Act was made by leading counsel at Leeds Assizes, when a man for whom he appeared pleaded guilty to murder and was sentenced to death.

According to *The Western Daily Press*, counsel described the case as one of the most extraordinary with which he had been concerned, and one in which there was no alternative to a plea of guilty. As the offence was committed with a pistol, it was still a capital offence, though one assumed that the section dealing with it was inserted primarily for the purpose of dealing with armed desperadoes. The present case was far removed from that.

It will be remembered that when the Bill was under discussion there was much criticism both in and out of Parliament, because, it was said, a man might deliberately kill his wife by slow poisoning and not be liable to the death penalty, while the man who shot someone in sudden anger and under some provocation, could be sentenced to death. No doubt the reason for dealing thus with the use of firearms was to try to deter those who are prepared to "shoot their way out" in the course of committing crimes and who are, therefore, regarded as a danger to the general public and to the police.

Films as Evidence

Seeing is believing, and there can be no better way of seeing whether something can be done, or how it is done, than by watching the process. It is not always possible for a court or a jury to apply this test, but photographs may be important aids to proof.

Today the cinematograph film can provide valuable evidence in some circumstances. *The Yorkshire Post*, reporting an action for alleged negligence by an employer brought by a former employee (*White* v. *Ideal Boilers and Radiators Ltd.*), says that Oliver, J.,

who tried the case, spoke of the inestimable advantage he had had of seeing a film. The plaintiff had alleged that certain work, namely, unloading a bath weighing 25 *cwt.* from a trolley, was too much for one man to handle and that mechanical handling should be used. The plaintiff had sustained a crushed toe.

The learned Judge said the film showed the work being done by one man with ease and nonchalance. Also, during the past six years, the process of handling had been applied to about 30,000 similar baths without any accident of the kind occurring. He held there was no negligence on the part of the defendants.

Adoption: "Cannot be Found"

In a certain number of applications for adoption orders the court is asked to dispense with the consent of the mother on the ground that she cannot be found. It is not always the case that the mother has shown the intention of deserting her child, but sometimes simply the fact that she has been negligent about keeping in touch with those to whom she has entrusted the care of her child, or unable to do so.

Before dispensing with consent on the ground that the mother cannot be found, a court should be quite satisfied that diligent efforts have been made to trace the mother. The Court of Appeal dealt with this upon an *ex parte* application of a mother in the case of *In Re C. an Infant* (*The Times*, April 1). An adoption order had been made in the county court, and she said it was made without her knowledge or consent, for which reason she asked to be allowed to appeal out of time. The application was dismissed.

In the course of his judgment, Lord Justice Denning said that in order that a Judge should be satisfied that the mother could not be found it must be shown to him on proper evidence that every reasonable step by every reasonable means had been taken to find the mother. Having reviewed the facts, the Lord Justice observed that a probation officer had been appointed guardian *ad litem* and it was part of his statutory duty to make a report stating what steps had been taken to find the mother. His report was that the mother had no known address and there was no means of tracing her; several of her moves had been discovered too late to contact her. It was fair to assume that that report would be elaborated before the Judge and that he would be satisfied that the mother could not be found. Nearly two years had passed since the order was made, and as this child of six could not remember her mother and had for five years been with foster parents in an excellent home, it would not be for her welfare to uproot her.

Another point to be noted in the judgment is that the court expressed the opinion that it is better for evidence in such cases to be given on oath. This, no doubt, applies to any report read or elaborated by a guardian *ad litem*.

The Welfare of the Infant

In deciding questions between husband and wife a court is sometimes perplexed about the order it should make in respect of the children. Every magistrate knows that the first and paramount consideration must be their welfare, but what is best for a child may be difficult to decide.

One thing is quite clear—welfare includes much more than material considerations. That was laid down long ago, and has recently been exemplified in the case of *C* v. *O* (*The Times*, April 2). This was an interlocutory appeal by a mother on the decision of a Commissioner who had given care and control to the father. It is not necessary in this note to state all the facts. What we wish to emphasize is the way in which the question in issue was decided. Lord Justice Denning, in the course of his judgment, referred to the delightful home possessed by the father, and compared it with that of his divorced wife and the co-respondent, who was now her husband. They were living in much less secure circumstances. The mother, moreover, went out to work, and her present husband was not altogether secure in his job. The material advantages were all on the side of the father. However, the Court had obtained a valuable and impartial report from the Court welfare officer. It appeared that the child was devoted to her mother and, however mistakenly, hated her father. There seemed little doubt that if the Court forced this little girl, aged 11, to go to the new home against her will and removed her from her mother, her present attitude towards her father might be strengthened by resentment. The truth was that she felt secure with her mother, not in material things, but because she felt that her mother loved her and she loved her mother—and through no fault of his own she did not feel secure with her father. This little girl was well able to have her own views and though security was to be found with her father, love and affection were to be found with her mother. Care and control must remain with the mother. The father must have reasonable access, and she should stay with him at times. The mother should encourage the child to see that there would be no disloyalty in going to stay with her father.

The Litter Menace

We have previously pointed out in these columns the growing menace of litter which annually wastes millions of taxpayers' and ratepayers' money not to speak of a great amount of manpower which should, in common sense, be far more profitably employed in an economy. Not only this but every day that goes by the problem gets worse. National beauty spots are spoilt by great deluges of litter, sporting events are even impeded by them, and the rising number of accidents at our seaside resorts shows that the litter habit can be dangerous as well as unsightly.

The steadily increasing number of articles packed in cartons, wrapped in various forms of packaging is going to see this problem completely out of control if it is not effectively checked now. Cigarette packets, sweets and chocolate wrappings, and ice-cream cartons are prominent items of litter but they are being reinforced every day by new kinds of rubbish to add to this public nuisance.

Some of the worst offenders are motorists. It is no rare occurrence for a motorist to throw litter out of the window as he flies along the road and sometimes this comprises the bulk of his luncheon box. A case was even reported of a fatal casualty due to such habits. A motorist threw a bottle out of the window of his car and hit and killed a passing pedestrian who happened to be in the vicinity.

Our habits in this connexion compare most unfavourably with the tidy and economical ones of nations like the Swiss. Soon people will be making the most of England's attractions in the spring and summer but many will be damaging them as they enjoy them. How much longer is this process to be tolerated?

We learn that another private Member's Bill is now projected to try and cope with this problem. Mr. Rupert Speir, conservative member for the Hexham division of Northumberland is attempting to strengthen the law on the lines envisaged by Mr. John Hill who promoted a similar Bill last year which unfortunately did not secure sufficient time for discussion and so failed to become law. This time the Bill should have

better luck. It has all party support in "making provision for the abatement of litter and prescribing penalties for the deposit of litter."

Not only is there substantial support in the House of Commons for such a measure but outside as well. The formidable series of bodies which favour the Bill include not only all the local authority associations but the Country Landowners' Association, the Institute of Public Cleansing, the Council for the Preservation of Rural England, the Commons Preservation Society, the National Trust, the Town and Country Planning Association and the National Federation of Women's Institutes besides numerous other bodies and important local authorities.

Although there is machinery for penalising the litter habit it is not fully effective and in any event is rarely enforced by local authorities often because of the attitude of some magistrates' courts which treat offences as trivial affairs. What is required to improve matters is not only intensified education against litter but effective machinery to enforce penalties and the will and ability to operate it. In such a way we could produce a better climate of public opinion and one more intolerant of offences—an atmosphere in which the litter lout would be regarded as the public nuisance he really is.

Other useful adjuncts would be larger and more numerous and conspicuous litter bins (those on London Transport buses, for example, are quite inadequate) positioned in the places where there is the greatest prospect of rubbish being left.

An individual may think that his contribution to the litter in a public place is a small almost imperceptible matter but multiplied many thousands of times over it becomes an expensive, wasteful and dirty habit. We wish Mr. Rupert Speir the best of luck in his endeavours.

Electric Wires Across the Highway

The modern practice, which authority seems to do little or nothing to discourage, of garaging motor vehicles on the highway, has led some people, who wish to avoid running down their batteries, to supply electricity for parking lamps on motor vehicles by running electric wires from their houses to the vehicles.

The Birmingham Post of March 21 contains a report of a case in which a person who did this was fined £1 for "placing an electric cable across the highway, likely to cause danger to persons on the highway."

The police officer concerned stated that the cable ran 6 *ft.* 6 *ins.* above the pavement into the defendant's bedroom window. He added, "A lot of people who are not qualified electricians put these wires across the street, and if they fall down children and passers-by might easily be electrocuted."

The charge would seem to have been made under s. 51 of the Road Traffic Act, 1930. This section appears to have been aimed at ropes and wires across the highway for other purposes than for supplying electricity to a lamp on a car, and it provides that it is a defence if the person responsible proves that he has taken all necessary means to give adequate warning of the danger. Would the defendant in question have been able to avoid conviction if he had placed a notice on the wire warning all and sundry that it was a live wire carrying so many volts ?

Section 4 (1) of the Electric Lighting Act, 1888, deals with electric lines erected in, over, along, across or under any street for the purpose of supplying electricity, but this involves intervention by the Board of Trade and again does not seem intended to deal with the particular problem of the electric line run to a parked motor vehicle. We shall be interested if any of our readers are aware of a provision which deals more specifically with this matter.

Planning Injunction

We have often had occasion to remind readers that injunction is a discretionary remedy, and this whether it is applied for in the Chancery Division or the Queen's Bench Division. One of the working rules on which both divisions commonly act is that an injunction is not *prima facie* appropriate where the applicant has some other remedy which could have been used. The matter is dealt with in *Lumley*, in notes to s. 65 of the Public Health Act, 1936, and elsewhere.

The decision in *A.-G. ex rel. Hornchurch U.D.C.* v. *Bastow* [1957] 1 All E.R. 497, will be welcomed as perhaps indicating willingness to abate the rigidity of the working rule, although it has still to be remembered that each case rests on its own facts and in the discretion of the court. In the case cited, the defendant had failed to obtain planning permission for a caravan site. The local authority had served an enforcement notice under s. 23 of the Town and Country Planning Act, 1947, and the defendant's appeal against this notice was dismissed. He continued nevertheless to use his land in the same way and was convicted four times before the magistrates. The fines imposed increased steeply; on the first two occasions he paid them, and on the third occasion thought it better business to go to prison than to pay the fine. At this point the Attorney-General on the relation of the local authority started proceedings for an injunction, but the use of the land continued before the case came up for hearing in the High Court. Upon a fourth conviction, the defendant was fined £100 and again went to prison in default of payment. As was pointed out in the proceedings for injunction, the magistrates might have imposed a much heavier fine, but the defendant would no doubt still have preferred to go to prison and the illegal use of the land would have continued. In these circumstances, the court held it to be a proper case for an injunction.

What may be more important for precedent is that the court considered it rather to be a matter for the Attorney-General, acting in an administrative capacity when he is asked to lend his name in a relator action, than for the court itself, to consider whether alternative remedies have been exhausted. Our impression based on practical experience, and not upon anything which has been published, is that last century and early this century the Attorney-General's name was more easily obtained than it is today. With the immense burden falling upon him, of political as well as legal work, he could hardly have given close scrutiny to all the comparatively minor cases which might go to him. For a generation past, however, he has been provided with an office staff which, though small, can scrutinize cases and supply him with a précis. Not infrequently his legal secretary will send for a relator, or write calling for fuller information, before laying a case before the Attorney-General for decision. We have known impatience to be expressed about these inquiries, but they are in the long run useful to a local authority or other relator, because there is not the same need for the High Court to examine the early history of a case, as there might be if the use of the Attorney-General's name were a mere formality.

Daniel

So far as we know the speeches at the annual dinner of the Royal Institute of British Architects were not reported fully, elsewhere than in the March issue

of the Institute's *Journal*. It has been customary for a Minister or Ministers concerned with architecture to attend the dinner and to make a speech, which in the nature of things tends to be of formal style. This year Mr. Henry Brooke was prevented at short notice from attending, and his place was taken by the Permanent Secretary of the Ministry of Housing and Local Government. She might have been expected to deliver the speech prepared in the Ministry for Mr. Brooke, but decided instead to make her own speech; the audience lost nothing by hearing an unorthodox approach to several problems. We refer here to her speech, as reported in the *Journal*, for a special reason. First, she gave it as her opinion that English architecture has done well since the war in the fields of local authority housing and school buildings, and also in the industrial field. For this she gave a reason which at first sight may cause surprise. It was that local authority architects, designing schools and houses, were left tolerably free by their employers to display professional skill in their own way. (Unkind persons might give another reason: that, by comparison with architects employed by private persons, they have, especially in regard to schools, more lavish funds available to back their fancies). So also, thought the speaker, the architect or engineer designing a factory is not much interfered with by his employers or by public bodies, because nobody pretends to know much about his functional requirements. When it comes, however, to privately provided housing and to commercial buildings public authorities step in and exercise controls, based upon the theory that they know better than the architect and building owner how the building ought to be designed. There is a complaint often to be found in the more serious newspapers, echoing opinion in artistic circles, to the effect that English urban architecture since the war, which means chiefly large offices and shops and blocks of flats, has been commonplace and uninspired.

We have not the knowledge to compare the English architecture with what has been done in the same sort of work in foreign countries, and prefer not to take sides in a question of architectural merit, but we are interested to find the Secretary of the Ministry which is responsible for planning controls accepting this criticism, and attributing the fault, in defiance of professional planners, to an excess of control by public bodies. Dame Evelyn Sharp added that she had invited six Ministers to make a speech upon these lines, but none of them would do so.

We have spoken sometimes of the deplorable delay which sometimes occurs in settling appeals to the Minister of Housing and Local Government under the Town and Country Planning Acts. Dame Evelyn doubts, apparently, whether a great deal of the work of control ought to be done by public authorities at all. She would retain control over plot ratio and the site and line of architecture, but otherwise would leave architects free to design whatever kind of building they liked, and even to go as high as they felt inclined. These are stimulating reflexions, running counter to the ideas which have become fixed in influential minds, and to the practice of Parliament since the Town and Country Planning Act, 1932.

Parish Powers

The Parish Councils (Miscellaneous Provisions) Bill was introduced into the House of Commons by a conservative private member and backed by members of other parties. It was said, not quite accurately, to be the first Bill to deal with parish councils alone, and for this and other reasons it deserved and received a welcome on all sides. Most of its provisions are small beer, and for our part we should, as part of the reform of local government, like Parliament to extend the list of things which parish councils can do in their own right, as well as by delegation from rural district councils. The Bill contains one interesting if partial illustration of what might be done along these lines. Under the Public Health Act, 1925, parking places may be provided by rural district councils, as they may by the councils of boroughs and urban districts. This power of the district council is wide enough to enable it to provide a parking place for bicycles as well as larger vehicles, although the power is commonly thought of in relation to motor cars. Clause 4 of the Bill now before Parliament proposes to enable parish councils to provide parking places for "bicycles and motor-cycles." The purpose seems reasonably clear, namely, that the district council shall provide parking places under the Act of 1925, for vehicles with four wheels or more and the parish council for bicycles which will, presumably, be used chiefly by people in the parish. The clause will not do as it stands, because it makes a flagrant cross-division. Its draftsman apparently forgot that motor-cycles are usually bicycles, and failed to make clear what is desired for the motor tricycle, which apparently is to be allowed upon the parish parking place although a pedal tricycle is not. The mischief here arises from the vulgar use, now prevalent, of the word "cycle." If a boy is allowed to speak of riding his cycle, which is a bicycle, there is no great harm except that he misses the meaning of the word—in which it differs from those other shortened forms, phone and bus. If the clause is intended to provide for two wheeled "cycles" only, well and good; in that event it should speak of motor bicycles and make it clear that a bicycle with a side-car is excluded.

There is, too, a problem presented by the small vehicles which we have seen referred as as "bubble cars." These are usually tricycles, although some, equally small, have four wheels and are therefore presumably not "cycles" in an ordinary acceptation of that word: a further practical proof of the confusion which arises from treating "cycle" as a genus comprising vehicles with fewer than four wheels. If we rightly understand the intention of the promoters of the Bill, the simplest course will be to limit cl. 4 to bicycles, leaving parking places for all vehicles which have three wheels or more to be dealt with by the rural district council.

Another useful and overdue reform proposed is to get rid of the Lighting and Watching Act, 1833, and give a revised power of lighting. It will be a good thing, also, to modernize the power of providing seats and shelters, getting rid of the Public Improvements Act, 1860.

Home Fires Burning

The Heating Appliances (Fireguards) Act, 1952, drew public attention to the need for fireguards on electric, oil, and gas heating appliances for domestic use. After rather a long period allowed for the clearance of old stock, it became illegal to supply these appliances, unless fitted with a fireguard giving protection at least equal to that given by British Standard Specification, 1945. It is possible that concentration upon the types of appliance mentioned above, for which fireguards have now become compulsory, diverted attention from the possible danger of fires burning solid fuel. On October 31, 1956, the British Standards Institution issued specification 2788 for a fireguard for open fires burning solid fuel, and circular 13/57 from the Ministry of Housing and Local Government advises local authorities to make sure that in their own houses

fixtures are provided, where there is a solid fuel fire, so that the newly specified fireguard can be used. Paragraph 175 of the Housing Manual, 1949, had already recommended such fixtures, but there was not then an appropriate British Standard Specification, and a survey carried out with the co-operation of women's organizations has shown that comparatively few local authorities had acted upon the advice given in the Manual.

The new circular from the Ministry reminds local authorities of the power given them by s. 8 of the Housing Act, 1949, to sell fireguards to their tenants, and further urges that local authority staff visiting council houses should bring the danger of unguarded fires to the notice of tenants. Fifty *per cent.* of burning accidents in the home are said by the *British Medical Journal* to be caused by direct or indirect contact with some type of unguarded fire.

There is one point which perhaps was regarded as too obvious to mention in the circular. This is that a fireguard designed to give adequate protection under the normal circumstances of household use is not child-proof. We have just been asked to advise upon a case where a fireguard, newly supplied by a local electricity board for an existing electric fire, had been fixed, and nevertheless a boy of three who was left alone for a short time contrived to suffer serious injury. The law cannot wholly take the place of parental watchfulness. A second point which arises on the circular is that of the time taken to obtain fireguards complying with specification 1945, to be fitted to existing electric or gas heating appliances. The Minister expresses himself in the circular as being sure that gas and electricity boards and contracting firms will do their best to supply suitable fireguards, and a similar assurance was given in the House of Commons last year by the Parliamentary Secretary of the Ministry of Fuel and Power. We have, however, heard from a reader of a case where the staff of an electricity board stated, in reply to his inquiry, that it did not pay them to stock fireguards for existing fires, which must be specially ordered, and also of its having taken more than four months for one of the best known manufacturers to fulfil an order (for two fireguards to fit their own standard make of electric fire), placed through an ordinary dealer in electrical fittings in central London. If local authorities are able to quicken the pace of delivery, perhaps by placing orders in bulk and supplying to their tenants, the result in saving lives and in avoiding injury may well be striking. Once it becomes known that such things are always to be found in council houses, the occupiers of other property may be inclined to follow the example. It is not so much that householders do not know the danger, as that they have hitherto risked it, and regarded the providing of a fireguard as a piece of fuss.

THE OBSCENE PUBLICATIONS BILL

This Bill, introduced by a private member on the last Friday in March, is shorter and on the face of it more simple than the draft Bill printed as an appendix to *Obscenity and the Law* which we reviewed a year ago. It had also better luck than some earlier Bills in the House of Commons, in that the Government did not resist its second reading. It would have been hard for them to do so, when almost unanimous support was given by those members present to the central idea that the law called for alteration, and Mr. J. E. S. Simon, the newly appointed Under Secretary of State for Home Affairs, came to the subject with a lawyer's understanding, which has not always been the case with Ministers dealing with this topic. He proposed on the Government's behalf that the Bill should be sent to a select committee, instead of to an ordinary standing committee of the House; in select committee it is easier to recast a Bill, and for this he promised the assistance of the Government.

The Bill is, quite generally speaking, on lines we advocated in our articles of 1954, but it calls for an unusual amount of reconstruction. It seems to a draftsman's eye to have been put together in a hurry, perhaps because the promoting members found that an earlier Friday was available than had been expected.

For example, the enactments giving an author, artist, or publisher a *locus standi* in proceedings under the Obscene Publications Act, 1857, come in as part of a proviso to the section which creates the new statutory offence of distributing or manufacturing for sale any obscene matter. When a publisher or bookseller is prosecuted for this new offence (which is to take the place of the common law offence created by the Judges in the reign of Queen Anne) it is no more than just that the artist or writer whose work is involved should have a right to be heard. Justice demands the same right when the Act of 1857 is set in motion. But, as we pointed out in 1954, there are differences between legal proceedings against a person and legal proceedings against a book or picture. Much confusion has arisen in past cases and in the public mind, and in new legislation it is desirable to treat these proceedings separately.

To turn to another provision which we can decidedly support in principle, clause 4 of the Bill obliges the Commissioners of Customs and Excise, when they detain any matter regarded by them as obscene, to take the initiative in bringing it before the courts. This is a reform we urged in 1954, and again at p. 227, *ante*. It would bring English law into line with what (we understand) is the Federal law of the United States, and by the provisions of clauses 1 and 2 of the Bill (as introduced) the author, artist, and publisher would have a right to come in and be heard: a right which, as we have pointed out before, is given by the present English law only to the owner of the object seized. Unless the Customs bring the matter before the courts within a reasonable time, the Bill will require that the matter seized be released to its consignee. There are points to be tidied up in this clause: for example, the Customs are required to go into court within a reasonable time, but may not go at all without consent of the Attorney-General. We should have thought it simpler to say, as does the Federal statute in the United States, that the Customs shall inform the Director of Public Prosecutions, and leave him to take proceedings if so minded.

Again, our own proposal of 1954 was that the Director of Public Prosecutions should initiate all proceedings for obscene publication, either against persons or against books and pictures. By bringing in the Attorney-General's consent for all forms of proceeding except initial seizure by the Customs, the Bill may intend to provide a further safeguard, in that responsibility is put on a higher plane. But this may be illusory. It means that not merely will proceedings in the Customs cases (as already mentioned) still be in their hands, but proceedings in other cases, either against persons for the new

statutory offence, or against books and pictures under the Act of 1857, will be in the hands of the police, unless the Director of Public Prosecutions takes over a particular case. This method will present the weakness that the Attorney-General will be put in the position of stopping, or considering whether he will stop, proceedings already contemplated by an authority not under his control. We think his position would be surer, and the intended safeguard stronger, if the police merely reported facts to the Director, and under the general instructions of the Attorney-General the Director then decided what to do. Nor does it seem necessary to bring in the Attorney-General, as clause 8 does, or even the Director of Public Prosecutions, at the very first stage under the Act of 1857—the stage, that is, where police go for a justice's warrant to enter premises and take possession of articles, to be later brought before the court for adjudication. It would be simpler and we think less clumsy to let this stage proceed as at present, assuming that the Act of 1857 must in substance stand. The stage of entry and seizure is, logically, parallel to the stage of seizure by the Customs in a case of importation. It is after seizure that primary importance begins to attach to bringing the Director in, for the purpose of deciding whether to go further.

Turning to the definition of obscenity in clause 2 of the Bill, we think it will call for careful examination in committee. Indeed, some features of this clause were adversely noticed on second reading, by members who gave the Bill general support. For instance, the second limb of the definition is matter which "unduly exploits horror, cruelty, or violence." This was put into the earlier Bill to catch the so-called "horror comics." Many of those shown in the exhibition organized in 1954 by the National Union of Teachers were obscene in the true meaning of the word, though almost none were sexual (and none comic in any normal acceptation of the adjective). But is the provision in place in this Bill now, when horror comics have attained the dignity of a statute of their own? If they are to be inserted here, what is meant by "undue exploitation"? Horror, cruelty and violence must be dealt with for some purposes in print, for example in reports of cases in the courts, or some polemics, but is it ever proper to "exploit" them? Some heart-searchings might be avoided if this part of the definition were removed. Incidentally, too, the same part of the definition includes the words "whether or not related to any sexual context." Sex however is not in itself obscene; it can be obscene and an obscene context, but so can other contexts—notably the low grade wit which plays around excremental functions. It is, in truth, a perversion of modern English usage, to attach the epithet "obscene" almost exclusively to words and works which relate to sex.

The first part of the proposed definition is drafted with an evident desire to safeguard authors and others from the more ridiculous results of the test laid down in *R.* v. *Hicklin* (1868) 18 L.T. 395. It is no longer to be fatal to a book or other work that it might corrupt a person open to corruption if it came into his hands. Matter is not to be deemed obscene unless its dominant effect is such as to be reasonably likely to deprave and corrupt persons to or among whom it is intended to be distributed. This lets out works "intended" for the scholar or penologist. It would probably let out many or even most works in foreign languages. Further, the clause enacts expressly that expert evidence may be received upon the literary or artistic merit of the work, or its scientific, political, or religious character or importance.

This last is the point upon which, as we said in 1954, the worlds of literature and science feel most strongly. In truth, the judgments in *R.* v. *Hicklin* do not preclude the court from hearing expert evidence, and if intelligently studied seem designed to leave an opening for it. Nor have the courts ever been precluded by authority from applying their own minds to the merit of the works before them. The doctrine that they cannot do so, and therefore cannot receive evidence, is a gloss introduced much later, notably by Sir Chartres Biron and by Mr. Mead. When the latter said that "the most beautiful picture in the world may be obscene," and proceeded to give his decision on that footing, he was ignoring the very words of the Act of 1857 itself, "fit to be prosecuted as such." However, the aberration has become so firmly rooted, in the understanding of the legal profession and of the outside world, that it is wise to declare in the proviso to clause 2 of the Bill that evidence of these matters may be heard. We should like to phrase the proviso differently, and say that the court may consider these aspects of the merits; and (if thought necessary to say so expressly) that it may hear evidence: evidence should not be excluded, as it has been in practice hitherto (in our opinion wrongly, even as common law and the Act of 1857 stand at present) but we do not see why a court or jury should not make up its own mind if it can, without such evidence.

The Bill as a whole is to be welcomed. It is intended to introduce reforms of law and practice which are essential if England is to hold a position among the civilized nations. It will certainly need much amendment in select committee, but its reception on March 29 by the House of Commons is of good augury for the country's reputation.

ADDITIONS TO COMMISSIONS

ANDOVER BOROUGH

Leslie Ernest Maund, 8, Ashfield Road, Andover, Hants.

BEDFORD BOROUGH

Mrs. Audrey Stella Armstrong, 5, Waterloo Road, Bedford.
Ernest Wilfred Coleman, 14, Polhill Avenue, Bedford.
Geoffrey May Inskip, 18, The Green, Goldington, Bedford.
Alan Herbert Randall, 33, Pemberley Avenue, Bedford.
Mrs. Constance Maud Valentine, 9, Bunyan Road, Bedford.

BERKS COUNTY

Neville Edward Spencer Allen, Scotlands, Crazies Hill, Wargrave, Reading.
Brigadier Cornelius Mearns, O.B.E., The Mead, Inkpen, Newbury.

KING'S LYNN BOROUGH

John Ben Dack Walton, Lovell's Cottage, Terrington St. Clement, Norfolk.

ROCHESTER CITY

Mrs. Hilda Annette Gee, M.R.C.S., L.R.C.P., 19, Victoria Street, Rochester.
Ivor John Phillips, 37, Priestfields, Rochester.
Mrs. Elsie Elizabeth Pink, 39, Prospect Avenue, Friendsbury, Kent.
Herbert Wilson, 20, Glanville Road, Strood, Kent.

SALISBURY CITY

Sidney Fawcett, Windover House, St. Ann Street, Salisbury.
Edward Laurence Griffiths, 1, The Close, Salisbury.
Alfred George Williams, 46, Heath Road, Salisbury.
John Wort, Grasmere, Harnham Road, Salisbury.

SOMERSET COUNTY

James Alexander Lord, 30, Freemantle Road, Taunton.

STAFFORD COUNTY

Charles Bennett Adams, 29, High Street, Blackheath, nr. Birmingham.
Dennis Morford Dean, 410, Erdington Road, Aldridge, nr. Walsall.
Mrs. Elsie Jones, 54, Moss Street, Chadsmoor, Cannock.
Thomas Alec Robinson, The Grange, Penkridge, nr. Stafford.

SURREY COUNTY

Malcolm McGougan, 1, Paper Buildings, Temple, E.C.

UNDERGROUND WATER

By A. S. WISDOM

Surface water, whether flowing in rivers and streams, or static in lakes and ponds, is everywhere to be seen in abundance in this country. But water beneath the ground, which is just as plentiful, is apparent only when it emerges to the surface in the form of springs or is drawn up out of a well or is pumped up through a borehole. A convenient start can be made by considering some of the law relating to springs, wells and boreholes.

Springs, Wells and Boreholes

A spring of water, both in law and ordinary language, is a natural source of water of a definite and well-marked extent: *Taylor* v. *St. Helen's Corporation* (1877) 37 L.T. 253. Another definition of a spring is given in *Brain* v. *Marfell* (1879) 41 L.T. 457, *viz.* "a spring is not an artificial space, but a natural chasm in which water has collected and from which it is lost by percolation or rises in a defined channel." A right to take water from a well by reason of the occupation of a dwelling-house, and for the more convenient occupation thereof, is an interest in land (*Tyler* v. *Bennett* (1836) 5 Ad. & El. 377), and water as it issues from a spring or well is not to be considered as the produce of the soil so as to make the right to take it *in alieno solo* for domestic purposes a *profit à prendre*; such right is an easement only and may be claimed by custom: *Race* v. *Ward* (1855) 19 J.P. 563. After twenty years uninterrupted enjoyment of a spring of water an absolute right to it is gained by the owner of the land in which it issues above ground and an adjoining owner cannot lawfully cut a drain whereby the supply of water to the spring is diminished: *Balston* v. *Bensted* (1808) 1 Camp 463.

A landowner is entitled to sink a shaft on his land for the abstraction of water percolating underground through his land (*Bradford Corporation* v. *Pickles* (1895) 60 J.P. 3), but the construction of a well, borehole or other work for the purpose of abstracting underground water in certain areas which have been defined in a conservation order made under s. 14 of the Water Act, 1945, requires the licence of the Minister of Housing and Local Government except in the following cases, namely (1) if the construction is for the purpose of abstracting water solely and to the extent necessary for a supply of domestic household water; (2) if the construction is expressly authorized by any enactment; (3) for experimental boring connected with (1) or (2) above; (4) for experimental boring for the purpose of ascertaining the presence of underground water or the quality or quantity of such water if the work is carried out with the Minister's consent. (*See* s. 14 of the Water Act, 1945, and s. 5 of the Water Act, 1948.)

Types of Underground Water

Lord Chelmsford in *Chasemore* v. *Richards* (1859) 23 J.P. 596, drew a distinction between "a known subterranean channel flowing in a certain and defined course" and "water percolating through underground strata, which has no certain course, no defined limits, but which oozes through the soil in every direction in which the rain penetrates." Legally speaking, there is no great distinction between the rights relating to water flowing in a defined channel on the surface and rights of water flowing in known and defined underground channels, and it was stated in *M'Nab* v. *Robertson* [1897] A.C. 129, that "a subterranean flow of water may in some circumstances possess the very same characteristics as a body of water running on the surface."

The meaning of a "known and defined channel" has been considered on a number of occasions by the courts, starting with two Irish cases.

A "defined" channel means a contracted and bounded channel, although the course of the stream may be undefined by human knowledge; "known" means the knowledge by reasonable inference from existing and observed facts in the natural or pre-existing condition of the surface of the ground and is not synonymous with "visible," nor is it restricted to knowledge derived from exposure of the channel by excavation: *Black* v. *Ballymena Commissioners* (1886) 17 L.R.Ir. 459. In order to apply the rule as to riparian rights to subterranean water, it must flow not only in a defined channel but in a known channel, giving to the word "known" a sense beyond what is conveyed by the word "defined": *Ewart* v. *Belfast Poor Law Commissioners* (1881) 9 L.R.Ir. 172, in which case underground water was only discovered by deep excavations made in the land under which the water flowed, and even then it was a matter of some doubt whether there was a defined channel.

These two Irish decisions have been considered in later English cases. In *Bradford Corporation* v. *Ferrand* (1902) 67 J.P. 21, it was held that if underground water flows in a defined channel into a well supplying a stream above ground, but the existence and course of the channel are not known and cannot be defined except by excavation, the lower riparian owners on the banks of the stream have no right of action for the abstraction of the underground water. *Bleachers' Association, Ltd.* v. *Chapel-en-le-Frith* R.D.C. (1933) 96 J.P. 515 applied the meaning of the words "defined" and "known" given in the Ballymena case and, in considering *Bradford Corporation* v. *Ferrand*, thought that the head-note thereto should be amended by reading into it the word "subsequent" before the word "excavation."

Now going back to the distinction made between the two types of underground water in *Chasemore* v. *Richards, supra*, it was also pointed out in that case that the principles which regulate the rights of landowners in respect of water flowing in known and defined channels, whether upon or below the surface of the ground, do not apply to underground water which merely percolates through the strata in no defined channels, and, to quote but one example, underground water not flowing in a channel cannot be the subject of property or capable of being conveyed: *Ewart* v. *Belfast Poor Law Commissioners, supra*. The remainder of this article is concerned with the law relating to underground percolating water which has no defined course.

Abstraction of Underground Water

Most of the law which has been built up in relation to underground water is concerned, not unnaturally, with the abstraction or interception of such water. The keystone of the case law on abstraction is *Chasemore* v. *Richards*, already referred to, but before dealing with that case two earlier decisions should be mentioned.

Acton v. *Blundell* (1843) 13 L.J.Ex. 289, stated that the owner of land through which water flows in a subterranean course has no right or interest in it which enables him to

maintain an action against a landowner who, in conducting mining operations in his own land in the usual way, drains away the water from the land of the first-mentioned owner and leaves his well dry. In *Dickinson* v. *Grand Junction Canal Co.* (1852) 7 Ex. 282, where a land-owner by digging a well prevented underground water from reaching a river which it would otherwise have reached, it was held that an action would lie against the land-owner by a riparian owner for injury to his right, whether the underground water was part of an underground channel or percolated through the strata.

Acton v. *Blundell* was followed, but the *Dickenson* case was over-ruled, in *Chasemore* v. *Richards, supra,* where a mill owner who had for more than 20 years enjoyed the use of a stream, which was chiefly supplied by percolating and underground water, lost the use of the stream after an adjoining landowner had dug on his own land an extensive well for the purpose of supplying water to the inhabitants of the district, many of whom had no title as landowners to the use of the water. The House of Lords decided that the mill owner could not maintain an action for the interception of the underground percolating water.

There have been a number of decisions in the wake of *Chasemore* v. *Richards* which have defined more concisely the circumstances and limits within which percolating water can be abstracted or intercepted without giving rise to a right of action against the person whose works are responsible for the abstraction, by an owner whose supply of water is diminished as a result of the abstraction. Generally speaking, where underground percolating water is intercepted (*a*) before it has reached a well, or (*b*) when it has reached and is actually in a well, no action will lie, but if percolating water is abstracted (1) as it issues from the ground as a natural spring and before it flows in a defined channel from its source, or (2) where it has arrived in a defined channel on the surface, a right of action arises.

Taken individually, these cases form useful extensions to the decision in *Chasemore* v. *Richards,* but considering the cases collectively it is difficult to establish any general secondary rules which run either concurrently with or consecutively to *Chasemore* v. *Richards.* For instance, it cannot be concluded from these cases that percolating water, once it reaches the surface, will be subject to the same rules which govern water flowing on the surface, since percolating water does not necessarily flow in a defined surface channel, as to which *see M'Nab* v. *Robertson, supra.* In that case, it was held that where a person sinks a tank near some ponds and draws off from marshy ground percolating water which would have found its way eventually to one of the ponds, the water percolating through the ground towards the pond is not water in any stream leading to the pond. For other cases on casual surface water *see Rawstron* v. *Taylor* (1855) 11 Ex. 369; *Broadbent* v. *Ramsbotham* (1856) 11 Ex. 602; *Bartlett* v. *Tottenham* [1932] 1 Ch. 114.

The decisions following *Chasemore* v. *Richards* start with *Dudden* v. *Clutton Union* (1857) 1 H. & N. 627, concerning a natural stream of water arising from a spring which served the plaintiff's well. The defendants sank a well in the ground for their workhouse and caught the water as it arose from the earth. *Held*: that this was not taking underground percolating water, but water after it had arrived at the spring-head, and the plaintiff therefore succeeded. The principle is not affected by the fact that the source of the spring has been built round and formed into a well, resulting in an artificial channel for a short distance: *Mostyn* v. *Atherton* (1899) 81 L.T. 356.

In *Brain* v. *Marfell* (1879) 44 J.P. 56, the defendant sold the plaintiff a well and the right to convey water therefrom through the defendant's land without interruption. The court decided that the defendant had only conveyed the flow of water after it had risen in the well and that no action would lie for interception of percolating water before it reached the well. Where water which has actually percolated into and is in a well has been abstracted by operations in the adjoining land, no action will lie: *New River Co.* v. *Johnson* (1860) 24 J.P. 244.

Although a landowner will not in general be restrained from drawing off the subterranean waters in the adjoining land, he will be restrained if in so doing he abstracts the water flowing in a defined surface channel through the adjoining land: *Grand Junction Canal Co.* v. *Shugar* (1871) 35 J.P. 660. But contrast this with *English* v. *Metropolitan Water Board* (1907) 71 J.P. 313, where the defendant's pumping from a well led to the general lowering of the water in the neighbouring soil, causing the soil to become dry, and a portion of the water flowing down a nearby stream leaked out through the bed and side of the stream, and the supply of water to a lower riparian owner was sensibly diminished, though none of the water which leaked out reached the well. It was held that the riparian owner had no cause of action against the person pumping the well, because the injury was caused by the withdrawal of support and not by abstraction from the stream.

A landowner is not entitled to compensation under statute for the abstraction of water from underground springs, which rose in his land and fed his ponds, by a sewer made under the authority of the statute, in neighbouring land, since compensation can only be claimed where the damage would have been a ground of action if arising from the act of a private individual, and, as the abstraction of underground water was not actionable, compensation could not be claimed: *R.* v. *Metropolitan Board of Works* (1863) 27 J.P. 342.

In *Bunting* v. *Hicks* (1894) 70 L.T. 455, pumping from the defendant's well reduced the general water level in the adjacent soil, with the result that some water flowing in a nearby stream leaked out through the bed and banks and thereby reduced the flow of water in the stream, to the detriment of a lower riparian owner. *Held,* following *English* v. *Metropolitan Water Board, supra,* and distinguishing *Grand Junction Canal Co.* v. *Shugar, supra,* that the riparian owner had no cause of action, as the defendant did not appropriate any of the stream water by his pumping, but only caused it to sink into the ground by withdrawing the support of underground water.

The last of the major decisions following *Chasemore* v. *Richards* is apparently *Bradford Corporation v. Pickles, supra.* Here the respondent sank a shaft on his land to a spring from which the water undertakers derived part of their supply, and he also drove a level through his land for draining the strata for working minerals. These operations resulted in a diminution of the supply, but the House of Lords held that the respondent was within his rights in that the acts done were all upon his own land and the interference with the flow of water was an interference with underground percolating water and not water flowing in any defined stream. If the neighbouring landowner's act is a lawful one, it is immaterial what his motives may be, in doing so, and cannot render the act unlawful. This case is supported by an earlier one, *South Shields Waterworks Co.* v. *Cookson* (1845) 15 L.J. Ex. 315, which decided that although there may be a local Act empowering water undertakers to provide

water supplies for the local inhabitants, this will not prevent the owners and occupiers of land within the undertakers' limits of supply from sinking wells although the effect may be to draw off water from the undertakers' springs.

Lastly, any commentary on the law regarding underground water would not be complete without some reference to the pollution of percolating water and what rights there may be to the support of underground water.

Pollution of Percolating Water

Although the abstraction or diversion of percolating water is not actionable, the pollution of water trickling through the soil in unknown or undefined channels is actionable, this being an exception to the rule in *Chasemore* v. *Richards*.

In *Hodgkinson* v. *Ennor* (1863) 27 J.P. 469, the plaintiff owned a mill and had an immemorial right to the flow of a stream from a cavern fed by rainwater from underground passages. The defendant owned a mine and discharged polluted water which eventually mingled with the water flowing through the cavern. It was argued for the defendant that under *Chasemore* v. *Richards* no action would lie for interference with underground percolating water, but the court held, following *Tenant* v. *Goldwin* (1703) Holt 500, that an action for fouling the stream was maintainable by the plaintiff. This was followed by *Womersley* v. *Church* (1867) 17 L.T. 190, where an occupier of land was restrained from using a cesspool therein in such a manner as to pollute water coming through his property and supplying a well in adjoining land. The position was further examined in *Ballard* v. *Tomlinson* (1885) 49 J.P. 692, where the plaintiff and defendant owned adjoining wells and the defendant turned domestic sewage into his well and thus polluted the water which percolated underground from his well to the defendant's property, and consequently polluted water came into the plaintiff's well by pumping. The Court of Appeal held that the plaintiff had a right of action against the defendant for so polluting the source of supply, although until the plaintiff had appropriated it he had no property in the percolating water under his land and despite his appropriating the water by the artificial means of pumping.

Support from Underground Water

A landowner has no right at common law to the support of underground water. Where a landowner by excavations drained adjoining land so that the soil subsided and cottages thereon became thereby cracked and damaged, the court decided that whilst "a man has no right to withdraw from his neighbour the support of adjacent soil—*see New Moss Colliery* v. *Manchester Corporation* (1908) 72 J.P. 169—there is nothing at common law to prevent his draining the soil, if for any reason it becomes necessary or convenient for him to do so." But this case has been held not to apply where, along with the withdrawal of underground percolating water from neighbouring land, wet sand and running silt is drawn off, the silt and sand always greatly predominating over the water: *Jordeson* v. *Sutton, Southcoates & Drypool Gas Co.* (1899) 63 J.P. 692.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Denning, Romer and Parker, L.JJ.)

R. *v.* MAGISTRATE SITTING AT THAMES MAGISTRATE'S COURT. EX PARTE GREENBAUM

January 28, 29, 1957

Metropolis—Street Trading—Appeal to magistrate's court—Competence—Refusal by borough council of licence for new pitch to street trader already holding licence—Certiorari—"Person aggrieved"—London County Council (General Powers) Act, 1947 (10 *and* 11 *Geo.* 6, *c.* 46), *ss.* 21, 25 (1).

APPEAL from an order of Queen's Bench Divisional Court.

An eel trader and a newsvendor each had licences to trade from prescribed pitches in G. Street, Stepney. About May, 1956, a better pitch fell vacant and both the eel trader and the newsvendor applied to the Stepney borough council for new licences prescribing the better pitch as the one from which they might trade. The council granted a new licence prescribing the new pitch to the newsvendor. The eel trader, who retained the licence prescribing his original pitch, appealed to the magistrate's court under s. 25 (1) of the London County Council (General Powers) Act, 1947, complaining that he was a person aggrieved by the refusal of the council to grant him an annual street trading licence under s. 21 of the Act. The magistrate allowed the appeal, to which only the council, and not the newsvendor, was a respondent. After various misconceived attempts to appeal against the magistrate's order, the newsvendor applied to a Queen's Bench Divisional Court for, and was granted, *certiorari* to quash it. On appeal by the eel trader,

Held: (i) the council had not refused to grant the eel trader an annual street trading licence, but had merely refused to prescribe the new pitch in his licence.

(ii) the refusal of the council to prescribe the new pitch in the licence was an administrative matter, and, therefore no appeal lay from it.

(iii) *certiorari* can be granted at the instance of a stranger and not merely at that of a person aggrieved by the order it is sought to quash, but, in any case, in the present case the newsvendor, although not a party to the proceedings before the magistrate, was a person aggrieved by his order.

Appeal dismissed.

Counsel: *Lawson, Q.C.*, and *Belcourt*, for the eel trader; *Lamb, Q.C.*, and *Graham Eyre*, for the newsvendor; *Rodger Winn*, for the magistrate.

Solicitors: *Saunders, Sobell, Greenbury & Leigh; J. N. Mason & Co.; Treasury Solicitor.*

(Reported by Henry Summerfield, Esq., Barrister-at-Law.)

PROBATE, DIVORCE & ADMIRALTY DIVISION

(Before Willmer, J.)

POSTLETHWAITE *v.* POSTLETHWAITE

February 25, 26, 27, 1957

Husband and Wife—Desertion—Misconduct conducing—Misconduct not amounting to just cause—Matrimonial Causes Act, 1950 (14 *Geo.* 6, *c.* 25), *s.* 4 (2), *proviso* (*iv*).

PETITION by husband for divorce on ground of wife's desertion.

The parties were married on August 25, 1943, and there were no children of the marriage. At the time of the marriage the husband was serving in the Royal Air Force, and the wife was living with her mother at Leicester where the parties cohabited when the husband was on leave. The husband was demobilised in 1946 and the parties continued to live at the wife's mother's house in Leicester. The husband returned to his pre-war job with a bank in Leicester; the wife had a business of her own in Leicester. In October, 1952, the husband was posted to London and on November 8, 1952, he left Leicester. The wife refused to accompany him to London. The husband spent Christmas, 1952, with the wife at Leicester, staying with her until December 29, 1952. He then returned to London and wrote several letters to the wife asking her to come to London to help him look for a house, but she refused to do so. In September, 1953, the husband acquired a bungalow in a London suburb, but the wife refused to join him there. On November 22, 1953, the husband wrote specifically inviting the wife to come to the bungalow and settle there as their home. The wife replied on November 30, 1953, in terms amounting to a final refusal to live with the husband. On

January 2, 1956, the husband filed the present petition for divorce. By her answer the wife asked that the petition be dismissed and did not herself pray for relief.

WILLMER, J., held that the wife had no just cause for absenting herself from her husband. To constitute just cause for one spouse living apart from the other spouse there must be a grave and weighty matter, *i.e.*, conduct of such a kind as, in effect, makes the continuance of married life together impossible. Nothing that had been alleged by the wife went anything like that distance. The things of which she complained in her husband may have caused unhappiness in the home, and may have made him difficult to live with, but they fell far short of anything which could amount to just cause within the interpretation which had to be put upon that phrase.

Desertion for the necessary period having been found, was it conduced to by wilful neglect or misconduct on the part of the husband, so as to call for the exercise of the discretion of the court? Apparently, this was the first case in which a plea of wilful neglect and misconduct conducing had been raised in answer to an allegation of desertion.

The only meaning which could be attributed to s. 4 (2), proviso (iv), of the Matrimonial Causes Act, 1950, was that it referred to conduct which was not sufficiently bad to constitute just cause, but which was something worse that the ordinary wear and tear of married life, such as either spouse must be prepared to accept when he or she took the other for better, for worse. In other words, one must see if there had been conduct which fell short of justifying the separation, but which might, in part at least, excuse it.

HIS LORDSHIP did not think that the matters of which the wife complained went outside the ambit of the ordinary wear and tear of married life, and, therefore he was unable to find that the husband's conduct amounted to wilful neglect or misconduct conducing to her desertion.

Decree nisi.

Counsel: *Ifor Lloyd, Q.C.*, and *Marshall-Reynolds*, for the husband; *Temple, Q.C.*, and *Binney*, for the wife.

Solicitors: *E. G. & J. W. Chester; Adam Burn & Son.*

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

MAGISTERIAL LAW IN PRACTICE

Liverpool Daily Post. February 2, 1957.

LIVERPOOL TEACHER ACCUSED

Mr. Arthur McFarland (Liverpool Stipendiary Magistrate) declined to deal summarily with a case in which Ralph Knowles McKnight, aged 42, a schoolmaster, of 187 Warbeck Moor, Liverpool, appeared yesterday on summonses accusing him of indecent assault on three boys.

Mr. D. H. Mace (for the Director of Public Prosecutions) said that in all 19 boys were involved over a period of 12 months.

Mr. Mace read a letter in which the Director of Public Prosecutions expressed the view that this was a case which could properly be dealt with summarily.

It appeared to him that the magistrate's powers were adequate to deal with the accused and the boys would not be required to give evidence more than once.

The Stipendiary Magistrate said that the case, in his view, should go for trial if the evidence justified it.

The hearing was adjourned until February 26 for committal proceedings. McKnight was allowed bail in his own recognizances.

In this case, although the Director of Public Prosecutions expressed the view that it was a case which could properly be dealt with summarily, the stipendiary magistrate decided that it was a case for trial on indictment and to proceed accordingly. He was not bound by the view of the Director of Public Prosecutions.

If, however, the magistrate had wished to deal with the case summarily, he could not have done so if the Director of Public Prosecutions had objected.

Section 19 of the Magistrates' Courts Act, 1952, deals with the summary trial of adults, with their consent, for the indictable offences specified in sch. 1 to the Act. Subsection (7) of that section provides that "nothing in this section shall empower a magistrates' court to try an indictable case summarily (*a*) without the consent of the prosecutor in a case affecting the property or affairs of Her Majesty or of a public body as defined by s. 7 of the Public Bodies Corrupt Practices Act, 1889; (*b*) without the consent of the Director of Public Prosecutions where the prosecution is being carried on by him."

Where a person is charged with an offence that is by virtue of any enactment both an indictable offence and a summary offence and the magistrates' court has begun to inquire into the case as examining justices, in pursuance of s. 18 (1) of the Magistrates' Courts Act, 1952, the court cannot afterwards proceed summarily without the consent of the Director of Public Prosecutions if the prosecution is being carried on by him (s. 18 (3)).

The Western Morning News. January 24, 1957.

GIRL HAD ABSCONDED TEN TIMES

A 17-year-old girl was committed for borstal training by Exeter magistrates yesterday after they had heard how she had absconded ten times from various approved schools.

Mr. Douglas Cross, for the prosecution, said that the girl, Janet Tibbs, had absconded from the Devon and Exeter Girls' Training School five times since she had been there. The charge before the court related to her absconding on December 29.

Tibbs, whose home is at Leamington Spa, heard her mother, Mrs. Agnes Tibbs, tell the court how she had written letters to the Queen and the Home Office in an attempt to have her daughter allowed to live with her.

Under s. 82 of the Children and Young Persons Act, 1933, an absconder from an approved school may be arrested without warrant and taken back to his school, and whether or not he is taken back he may, with the authority of the Secretary of State, be brought before a court of summary jurisdiction having jurisdiction in the place where he is found or where his school is situate.

Under para. 8 of sch. 4 to the Children and Young Persons Act, 1933, the managers of an approved school may bring before a court of summary jurisdiction a person detained in an approved school who has been guilty of serious misconduct, if they are authorized to do so by the Secretary of State.

Under s. 72 of the Criminal Justice Act, 1948, where a person is brought before a court of summary jurisdiction under either of those provisions, the court may either make a new approved school order, increase the period of detention under the original order for a period not exceeding six months, or, if the offender has attained the age of 16 years, sentence him to borstal training.

It is only in these cases that a magistrates' court may itself pass a sentence of borstal training, without committing to quarter sessions for sentence under s. 28 of the Magistrates' Courts Act, 1952.

The period of detention under a sentence of borstal training is now governed by s. 45 of the Prison Act, 1952. Subsection (2) of that section provides that a person sentenced to borstal training shall be detained in a borstal institution for such period, not extending beyond three years after the date of his sentence, as the Prison Commissioners may determine, and shall then be released: provided that the Prison Commissioners shall not release any person from a borstal institution before the expiration of nine months from the date of his sentence unless required to do so by directions of the Secretary of State.

BOOKS AND PAPERS RECEIVED

The Problem of Homosexuality. Edited by Edward Glover, M.D., LL.D. London. Institute for the Study and Treatment of Delinquency. 8, Bourdon Street, Davies Street, W.1. Price 3*s.*

The Psychopathology of Prostitution. By Edward Glover, M.D., LL.D. London. Institute for the Study and Treatment of Delinquency. 8, Bourdon Street, Davies Street, W.1. Price 1*s.* 6*d.* net.

I don't know which I dislike more
Or which shakes me deeper to the core—
Correspondence with that formidable fellow, the
Inspector,
Or with his colleague (or accomplice), the Collector.

J.P.C.

REVIEWS

Motor Claims Cases. Supplement to Third Edition. By Leonard Bingham. Publishers: Messrs. Butterworth & Co. (Publishers) Ltd. Price of supplement: 12s. 6d., plus 6d. postage; complete work 55s., postage 1s. 9d.

We reviewed the third edition of *Bingham's Motor Claims Cases* at 119 J.P.N. 62. The supplement, it is stated, " brings the report of cases to the Long Vacation, 1956." The Hotel Proprietors Act, 1956, is set out and reference is made at appropriate places to relevant provisions of the Road Traffic Act, 1956, and to the County Courts Act, 1955. There are a five page table of cases and a three and a half page index to this 87 page supplement. We do not pretend to have examined it in detail but where we have tested it there seem to be ample cross-references to facilitate the use of the supplement with the main work. We do not think that the inclusion, under the heading " Pedestrian Crossings," at page A. 18, of a reference to s. 14 of the Road Traffic Act, 1956, is particularly apt because this section is concerned with the conduct of pedestrians at any place where a police constable in uniform is for the time being engaged in the regulation of vehicular traffic on a road, and there may be no pedestrians crossing at such a place. A separate heading " Duty of pedestrians " or some such words would seem to be more appropriate.

The supplement can be conveniently fitted into the pocket on the back cover of the main volume, and anyone who uses that volume will be wise to bring the book up-to-date with this very useful supplement.

The Suez Canal. The Society of Comparative Legislation and International Law, 1956. Available from Stevens & Sons, Ltd., 119 Chancery Lane, W.C.2. Price not stated.

This is a special supplement to the *International and Comparative Law Quarterly*, whose publishers have decided to make it available to a wider circle than that of subscribers to their quarterly. It comprises a selection of documents relating to the international status of the canal, and the legal position of the Suez Canal Company. The documents range from November 30, 1854, to July 26, 1956. The first is the Firman granted by the Khedive to Ferdinand de Lesseps. In this Firman (printed in French) the Khedive welcomed the formation of a canal company by " capitalists of all the nations," for the purpose of joining the Mediterranean and the Red Sea by a ship canal. The concession was to last for 99 years, reckoned from the day of the opening of the canal. The last document in date is the Egyptian " nationalization " Law of 1956. This is printed in English, and its exact provisions should be noted carefully; it recites earlier Egyptian Laws, enacted before the present Egyptian régime. Amongst other documents included will be found the Anglo-Egyptian Agreement of October 19, 1954, by which Her Majesty's Government undertook to withdraw completely from Egyptian territory. The whole collection of documents forms a valuable background to today's dispute. They are printed without comment, and it would be a wholesome exercise, for many of those who take part in the present controversy on the subject of the Suez Canal, to study the information given here upon the juridical basis of that controversy.

Hill & Redman's Law of Landlord and Tenant. Supplement to Twelfth Edition. By W. J. Williams and M. M. Wells. London: Butterworth & Co. (Publishers) Ltd. Price 6s. net.

This is the first supplement to the twelfth edition of *Hill and Redman* and brings it up to date as at October 1, 1956. The complete work including the supplement costs £5 17*s.* 6*d.* The supplement is of the usual type, keyed to pages in the main volume. The period since the main volume appeared has produced only one set of regulations, namely the Rent Restrictions Regulations, 1956, which are printed in full with an explanatory note. There have however been several important decisions of the courts. *Miller* v. *Emcer Products, Ltd.* [1956] 1 All E.R. 237 is given, with a sufficiently detailed statement of the facts to enable the reader to follow it. There are also important decisions about the purpose of a landlord to demolish or reconstruct premises, as a ground for his obtaining possession, and there is a useful note upon the recent case where the Court of Appeal had to consider how far a company could be said to have formed an " intention," outside of a directors' meeting. A number of cases are noticed under the Agricultural Holdings Act, 1948, and also the important decision of the House of Lords in *Goodrich* v. *Paisner* [1956] 2 All E.R. 176, to the effect that the " separateness " of a dwelling, as determining whether it falls within the Rent Restrictions Acts, is a matter of fact, to be determined upon all the circumstances. Although the supplement contains no more than 20 pages, it will thus be seen to be particularly valuable. Those readers who find *Hill and Redman* the most useful general work of reference upon landlord and tenant will of course obtain the supplement; even those practitioners who prefer some other major work on this subject, for their regular purposes, can be advised to obtain the supplement in order to make sure of the latest information.

Tristram and Coote's Probate Practice. First Supplement to Twentieth Edition. By H. A. Darling, T. R. Moore and W. J. Pickering. London: Butterworth & Co. (Publishers) Ltd. Price 7s. 6d. net.

Since the main work appeared, new legislation has occurred in the County Courts Act, 1955, and the Administration of Justice Act, 1956. There have also been Rules of the Supreme Court for non-contentious probate costs. Part II of the noter-up comprises these new provisions. Part I indicates the alterations necessary to be made in the main work, to bring it up to date. Judicial decisions and changes in statutory instruments, as well as in the relevant statutes, have produced rather a crop of these alterations. Probate practice is one of those things which comes the way of every solicitor, and *Tristram and Coote* has for some time been a standard work of reference in this field. The supplement will no doubt be obtained for use with the main work. Solicitors and others who have not yet obtained the newest edition of the main work should know that this and the supplement together are obtainable for 95*s.* net.

The First Hundred Years of the Warwickshire Constabulary.

This booklet is published by the Warwickshire constabulary with the approval of the county's standing joint committee and it has been compiled by Inspector Hinksman. The chief constable, in a preface, points out that " unlike a regimental history it contains no record of valour or of successes against overwhelming odds. Many brave and unselfish acts have been performed over the years by members of the force . . . the steadfast devotion to duty of police officers goes, for the most part, unheralded and unsung. The measure of their success is the high esteem in which they are held by responsible citizens and by the absence of crime and serious breaches of the peace."

This is a tribute which is well deserved not only by the Warwickshire constabulary but also by police forces throughout the country. The booklet gives some facts about the policing of the county between 1839 (the date of the " permissive " Act) and 1857 when, under the 1856 Act it became compulsory to set up a police force for the whole county. Today the Warwickshire constabulary are responsible for the whole county with the exception of the cities of Birmingham and Coventry, each of which has its own force. The county force started with a strength of 133; today its authorized establishment is 558. There have been five chief constables and both the first (James Isaac, 1857 to 1875) and the present holder of the office (Lt.-Col. G. W. White, 1948 to date) had previously served in the Metropolitan police which played so large a part, in the early years of the county forces, in providing trained men to assist in the establishment of those other forces.

It is noted that the special constabulary is a very much older organization than the regular force, going back to the seventeenth century, but, at any rate in Warwickshire, little is known about its activities until the 1914–18 war. The " specials " reached their peak in the 1939–45 war when they were a fully uniformed, equipped and trained body of police officers giving invaluable assistance to the regular force.

The Warwickshire constabulary are fortunate in having had only one member, in 100 years of the force's existence, who met his death by criminal violence. In 1886, P.C. Hine, on February 15, left home for duty and was never seen alive again. His body was found some days later and it was assumed that he had been murdered by a gang of poachers. No one was traced as being responsible for this crime.

Taxation Key to Income Tax and Surtax. Edited by Ronald Staples. Forty-Second Edition. London: Taxation Publishing Company Limited, 98, Park Street, W.1. Price 10s. net.

We have reviewed this publication year by year, and called attention to its valuable features as a guide to a complicated branch of law, produced in a form which (to quote what is said upon the cover) gives any desired reference in five seconds. The edition now before us includes the Finance Act, 1956. The familiar features are still there, such as the double thumb index, enabling any topic to be picked up with the least possible trouble, and the full selection of incidental matter, such as tax references for the Republic of Ireland, and tables for calculating tax and grossing up.

Chorley & Tucker's Leading Cases on Mercantile Law. Supplement to Third Edition. By Lord Chorley and O. C. Giles. London: Butterworth & Co. (Publishers) Ltd. Price 3s. post free.

The main work to which this is a supplement appeared in 1948, and the supplement states the law as at June 1, 1956. There is not a great deal of new case law, or indeed new statute law, but the two Law Reform Acts of 1954 require to be noted. As is usual with these supplements, the work falls into two parts the first of which is a noter-up to pages of the main volume, while the second part sets out the facts, with extracts from the judgments, in each of the important new cases. The complete work comprising the main work and the supplement can be had for 18*s.* 6*d.* net, and is still notable as one of the most useful publications of its size from the point of view of the law tutor. The supplement will enable the student to avoid some traps, which might otherwise be set for him by alterations of the law.

Delinquent Child and the Community. By Donald Ford. London: Constable & Co. Price 24s. net.

Juvenile delinquency is ever with us, and the present author approaches the ancient problem from a novel angle. His avowed intent is to relate delinquency to the modern pattern of man's life, and he surveys the growing task-force which the State and the community have assembled to counter the besetting enemy. He writes "as a layman," and avoids speculating on theoretical factors—such as the growing volume of concentration on the problem itself. He devotes the first part of his work to an examination of the official machinery evolved by the State itself, the special tribunal, and the growing gamut of institutions whereby legal remedies are mediated. His expositions are characterized by an unusual freshness which springs from his extensive first-hand contact with the whole range of institutions which the great Act of 1948 has confirmed or created.

Chapter VI is notable for the vivid presentation of information about the new attendance centres and detention centres. He does not conceal his profound disapproval of the latter. He depicts them as the progeny of the military detention centres, "the war-time 'glass-houses' of ill-repute." "The centres are a monument to the loss of nerve of those responsible when confronted by the sudden rise in the incidence of delinquency in the post-war period: by the time the first centre was in operation, the fall in the figures of delinquency was already evident."

Mr. Ford devotes no fewer than five chapters to approved schools. He is anxious to free them from the suspicion of being a mongrel survival from less enlightened days, and to demonstrate their special and unique value in the re-habilitation of delinquents. He takes pains to justify their comparative expensiveness. By his figures, the cost of maintaining an adult prisoner in prison is now just under £5 a week, a borstal inmate £7 5*s.* 8*d.* a week, a child in an approved school £7 16*s.* 2*d.* a week, and he comments: "The approved schools are a positive agency for remedial work; the prisons, despite the claims sometimes advanced on their behalf, are at best only deterrent institutions, contributing very little that is positive. It is also probably true that approved school training saves many youngsters from spending their adult lives in mental institutions of one sort or another." To Mr. Ford, the hope of survival of the approved school is its ability to adapt itself to new needs.

"We are learning that there is no clear line of demarcation between the deprived and the delinquent child, and we now know that delinquency is very often the result of deprivation. This means, inevitably, that the approved schools will, in large measure, approximate more and more closely in their working to the working of children's homes. They seek to give a stable environment and a degree of emotional security."

The second part of the book is more disjointed. The author attempts to appraise the social implications of delinquency, and the influence of the dominant factors in juvenile life, the home, the school, the gang, the youth club, and housing conditions. The axiom that prevention is better than cure, has never become obsolete through the extension of criminological frontiers, and Mr. Ford gives us his mature reflections on the preventive influence the community at large may exercise through private agencies.

The author is versed in all the lore of modern psychologists and sociologists; but all the time he writes as a reporter in the front line of trenches. No one else has delineated so clearly the contribution of modern school organization to the widespread sense of frustration among teenagers, the new stigma created by the "eleven plus" examination. It would be a useful line of research to find what proportion of delinquents come from the modern secondary schools.

The chapter on Teddy-boys will probably date the book, for the species will soon be as extinct as the dinosaur.

Perhaps, however, the most noteworthy chapter in this part of the book, is that which focuses attention on the youth club. It is a sign of our times that youth movements, which were formerly the monopoly of private agencies, are becoming semi-nationalized. The contribution of the ratepayers to their maintenance increases year by year, and public attention needs to be turned more closely to their objectives and influence. Mr. Ford shows prophetic perception when he tries to assess their potential. Wise minds expect more of them than to provide facilities for harmless recreation or to "keep people off the streets." Mr. Ford stresses the fact that, for "deprived" youngsters, youth clubs are the only wholesome influence they are likely to encounter, and he is bold enough to claim for them the potentiality of a therapeutic agency.

The final chapter briefly rehearses Mr. Ford's underlying theme that every single child in trouble represents a social challenge.

Local Government Forms and Precedents. By A. Norman Schofield (Consulting Editor) and A. V. Risdon. London: Butterworth & Co. (Publishers) Ltd.; Shaw & Sons, Ltd. Price £2 2s. net.

We have already noticed the compendious *Encyclopædia of Local Government Forms and Precedents* produced last year. This index volume followed separately, and possesses in its own right a degree of interest greater than usually attaches to such a production. The publishers have arranged for separate entries to be made, according to types of documents and also according to the subjects in which the documents deal. This gives the user of the work an index *de luxe*, with the precedents embodied in the substantive volumes discoverable in the index from two sides; the facility thus afforded for finding the required form is increased by italic cross-references to many entries. This also means that, in addition to the classification by subject, the user of the book has the opportunity, if he chooses, of comparing forms used for different purposes—a process which, if followed up particularly by articled pupils and others who are set to draft forms for signature by local government officers, will tend to enlighten them upon differences or resemblances which they might otherwise overlook. Examination of the index is in itself an interesting process, because of the immense range of topics which the learned editors of the forms and precedents in the other volumes have dealt with. One finds the hiring of nursing equipment; a preservation order for an historic building, and instructions to the secretary of a hockey club, cheek by jowl on one page; on another mice, midwives, and an analyst's report on samples of milk have come accidentally together. Whether a local authority wishes to engage a repertory company, or to appeal to the Lands Tribunal; to give a receipt for cattle market tolls, or to insure against risk in respect of traffic signals, the official concerned will discover from this index that the learned editors have foreseen his requirements, and provided a precedent to help him. With the index now available, we foresee immense possibilities for saving time and ensuring precision, in dealing with almost every kind of work in a local authority's office.

Judicial Interpretations of the South African Criminal Procedure Acts. By C. W. H. Lansdown, E. F. Van Der Riet and G. N. Dock. Cape Town, Wynberg, Johannesburg: Juta & Co., Limited. Price £5 14s. net.

This substantial work follows the consolidation of criminal procedure in the Union of South Africa in 1955. Some of the cases which have been included turned upon enactments which are no longer in force, but have been retained in the text as a guide to further interpretation, and new cases have been added to bring the book up to date as far as possible. The work consists, substantially, of extracts from judgments of the superior courts of South Africa, with short head-notes illustrating the provisions of a large number of procedural enactments. By way of illustration we may quote "It is the court's duty to investigate the grounds for reasonable belief," on the part of a police officer or other person who relies upon the plea of reasonableness to justify the action he has begun. Again, "the onus of proving that a confession was made freely and voluntarily is upon the Crown." Such statements of the law have as much interest here as in South Africa. Other extracts from enactments, or brief statements, are "instead of imposing any punishment," "any statement on oath," and "if conducing to the ends of justice." Some of these cross-headings are extracts from statute law; others state some normally accepted rule of law or practice. So far as the book is specifically concerned with South African statute law it can hardly have a wide appeal to our own readers, but it has a decided interest for the philosopher of law and the comparative lawyer, who is enabled to watch the mental processes of Judges whose background is Roman-Dutch, in a country where modern exigencies have compelled reliance also on the common law of England. It is certainly informative, and on

occasion it may be useful even in practice, to see how trained intellects in some other country have dealt with a legal proposition, when that proposition occurs (or could just as well occur) in English law. From this point of view we think the work before us might well be included in English law libraries, and be brought especially to the attention of senior students proposing to sit for a law degree.

Green's Death Duties. Fifth (Cumulative) Supplement to Third Edition. By C. D. Harding. London: Butterworth & Co. (Publishers) Ltd. Price 12s. 6d. net.

This supplement is on the usual lines, with a tag for fixing into the cover of the main work. It is, perhaps, of more than usual importance. Since it is cumulative, and will supersede earlier supplements to the present edition of the main work, it is relatively long, running out to 100 pages. In Part II and Part III there will be found the relevant provisions of the Finance Acts from 1952 onward, with additional statutory instruments, of which the most important is the change made by the new Order LVIIIA, in regard to appeals from the Lands Tribunal and other tribunals to the Court of Appeal, by Case Stated. There are also several orders about double tax relief. Part I comprises the noter-up for the main work, of more than 60 pages. Quite a number of the provisions here involve substantial alterations of the main work, and some have called for explanation at some length by the learned editor, who is a member of the staff of the Estate Duty Office. Death duties are among the topics of constant occurrence in day to day practice, and it is necessary for the lawyer to keep abreast of developments. He will be enabled to do so by means of this cumulative supplement.

RITES OF SPRING—II

Further variations are being played upon the theme we introduced in last week's issue. In one of the courts at the Old Bailey the Judge recently observed a bunch of primroses in a small glass jar on the ledge of the jury-box. This charming though outlandish innovation led his Lordship to make reference to the rule that "the only people who have flowers are the Judges, who carry them in the summer-time." He did not enlarge upon the custom, which has a somewhat sinister origin; it dates, so it is said, from the days when gaol-fever was rife among the unfortunate creatures incarcerated in the cells to await their trial; in those times it happened, not infrequently, that the Royal Judges, attending to carry out their commission of gaol-delivery, were themselves struck down by the ravages of the disease. The bunches of flowers they carried, and the herbs strewn on the benches, were once considered potent enough to disinfect the noisome and fever-ridden air of the prison precincts. The ancient privilege has been regarded by the Judge in question, on this recent occasion, as applicable exclusively to the occupants of the Bench, and the primroses were removed to await their owner in the jury-room.

From primroses to snowdrops there is a simple process of modulation. At Plympton, Devon, a man and a youth were involved in what one may regard as a *scherzo* evolved out of the minuet episode above described. Summoned before the magistrate's court, they were said to have cut up a lead pump with a chopper, intending to sell it for scrap. But the interesting point in the evidence was the defendants' explanation to the police that their destructive activities were a mere sideline to the original expedition, which was for the purpose of "picking snowdrops." We have heard of the employment of a steam-hammer to crack a nut, but never before of using a chopper to facilitate snowdrop-picking. The latter occupation should now rank among the heavy industries.

Both Houses of Parliament have been celebrating the advent of springtide, the Commons with some pertinent (or impertinent) questions on army surplus stores, the Lords with a debate on an alleged *reductio ad absurdum* in the Shops Bill. A question in the Lower House elicited, from the Secretary of State for War, the astonishing reply that his Department had recently declared a surplus of 8,595,100 safety-razor blades. Pressed for further details, he raised loud and prolonged laughter by the announcement that "the vast majority of these were accumulated because we were fighting a great war." Controversy was sharpened by the disclosure that none of this formidable range of weapons had been declared surplus by either the Admiralty or the Air Ministry.

The Upper House meanwhile was making merry over some subtle distinctions in the Shops Bill, summed up by one peer in the words—"You can sell bread under the Bill but, if you want to sell a loaf with currants in it, you must be registered." Another noble lord retorted that "any baker could register, under some fancy name, and sell a muffin." Before the Committee Stage was concluded, the House had had its attention drawn to the various degrees in iniquity (under sch. 2), ranging from buying a bun and eating it in an omnibus (apparently lawful), eating it in a trolley-bus (allegedly a criminal offence) and eating it in a taxicab (legality doubtful). The debate eventually petered out with the customary reference to the "stopping of loopholes"—a singularly infelicitous expression (if we may say so) in this context of carbohydrates. All of which seems to show that the early spring weather which started the sap rising has also got the yeast fermenting, with a vengeance.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Forwarding exhibits to quarter sessions—Responsibility of clerk of the peace.*

Upon a committal for trial to quarter sessions the magistrates' clerk deposits all exhibits at the office of the clerk of the peace. This causes inconvenience because there is inadequate accommodation for the storage of bulky exhibits and for the safe custody of valuable exhibits.

1. (*a*) Is the clerk of the peace under an obligation to receive the exhibits ?

(*b*) If he receives them, to what extent is he responsible for their safe custody ?

(*c*) Is it in order for him to release them pending the trial, *e.g.*, in the case of (i) documents so that they can be photo-copied ; (ii) business books so that they can be used by the business in connexion with entries which do not relate to the trial ?

2. If he is not obliged to receive them, who do you suggest should receive them ?

3. Upon conviction of the accused at quarter sessions, then pending the expiry of the period for appeal and the hearing of the appeal, if any, please treat the queries set out above as applying also to this post-trial period as if in the queries "appeal" were substituted for "trial." It is, of course, appreciated that some of the exhibits will have to be sent to the Court of Criminal Appeal.

HASTLE.

Answer.

The only exhibits a magistrates' clerk is required to retain and forward to quarter sessions with the committal papers are those produced by witnesses who have been conditionally bound over to give evidence (Magistrates' Courts Rules, 1952, r. 12 (1)), unless there are reasons for not doing so. We would suggest that the copying of documents and the bulk of other exhibits would be good reasons for not retaining them. Rule 8 (*a*) of the Criminal Appeal Rules (1908 S.R. & O. 227) makes it clear that normally exhibits are to be returned to the custody of the person producing them. The form scheduled to the rules which the clerk of the committing court is required to send to the court of trial makes it clear that some person other than a court official may retain an exhibit.

Our answers would therefore be:

1. (*a*) Only those retained by the clerk to the committing magistrates and forwarded to quarter sessions.

(*b*) If he does receive them, we think he would be entirely responsible for their safe custody.

(*c*) Yes.

2. The person producing them.

3. The Magistrates' Courts Rules would not apply, but r. 8 (*a*) of the Criminal Appeal Rules apply, and, in the absence of any order from the Judge at the court of trial, the exhibits should be returned to the persons producing them.

2.—Housing Act, 1949, s. 4—*Conversion of house into flats at cost in excess of limit for advance.*

Section 4 (1) of the Housing Act, 1949, authorizes local authorities to make loans to assist persons, *inter alia*, (i) to construct houses and (ii) to convert into houses buildings which have been acquired, or to acquire buildings and convert them into houses. The definition of "house" under s. 50 (1) of the Act includes "a flat." Section 4 (4) provides that an advance shall not be made if the estimated freehold value of the house exceeds £5,000 but it goes on to provide that in the case of an advance for the *construction* of self-contained flats the £5,000 limit shall apply as respects each flat.

It seems clear that a loan may be advanced to assist, *e.g.*, the construction of a block of 10 flats if the value of each flat will not exceed £5,000, in which case the value of the whole block might be £50,000.

The question arises whether a loan may be made to assist a person to convert an existing house into 10 flats if the value of the house exceeds £5,000 but the value of each flat will not exceed that figure.

In view of the use of the word "converting" in subs. (1) in contra distinction to the word "constructing" and the fact that subs. (4) refers only to "construction," I am inclined to the view that in the case of the conversion of a house into flats it is the value of the house as a whole and not of the individual flats which must be considered in applying subs. (4). The effect of such an interpretation does, however, seem to be illogical.

I shall be obliged if you will let me know whether you concur in my view.

POVEN.

Answer.

The advance is in respect of the house to be converted from the building and is not in respect of the building. The limit in s. 4 (4) of the Act is on the house in respect of which assistance is to be given and not in respect of the building from which it is to be converted.

3.—Housing Act, 1949, and Housing (Rent and Repairs) Act, 1954—*Improvement grants—Standard rent.*

The council in this area make advances for the improvement of property under the Housing Act, 1949. Maximum rents have been fixed. Several properties have been let furnished with the approval of the Minister before the 1954 Act (Housing Rent and Repairs). It is now stated by the department that the 1954 Act alters the position and that any rent, whether the house is furnished or unfurnished, must not exceed the maximum rent. The department hold that a separate hiring agreement for the furniture does not alter the position. Your opinion with reasons would be valued. P.T.R.

Answer.

We agree with the Ministry that a letting above the maximum rent (now the standard rent) could not be justified unless it took the house outside the Rent Acts and, if it did, the letting would not comply with s. 37 (5) of the Act of 1954 which requires a letting on a controlled tenancy.

4.—Jury Service—*Exemption of certain local officials.*

Exemption from jury service can be claimed by "members of the council of a municipal corporation of any borough . . . and the town clerk and treasurer for the time being of every such borough, so far as relates to a jury summoned to serve in the county where such borough is situate." Will you let me have your view of the reasons why exemption from jury service is not extended to a treasurer of a county council, as it is to borough treasurers.

BAGAR.

Answer.

We have no doubt that the explanation is historical. When the Juries Act, 1870, gave the quoted exemption among many others, its field of operation was comparatively narrow. When the present system of local government took shape in 1888 and 1894 it was (we suppose) not thought expedient to widen the field by bringing in county and district members and officials, though members of the London county council (not county officials) secured exemption, within the county, in 1890.

5.—Landlord and Tenant—*Mutual repairing covenants—Enforcement after long default.*

In a lease made in 1935 relative to an agricultural property the following covenants appeared:

1. The landlords (*i.e.* my council) hereby agree to put the farmhouse and buildings in good tenantable repair at the commencement of the tenancy ;

2. The tenant hereby agrees to keep all messuages and buildings (with fixtures therein) gates hedges and fences and all roads bridges drains ponds drinking places hedges ditches and water courses which are now or shall during the tenancy be upon the premises in good and complete repair order and condition (except so far as the landlords hereinbefore agreed to prepare the same).

It appears that my council did not carry out their covenant at the commencement of the tenancy and the tenant has not carried out his covenant. The result is that the farmhouse is now in a very dilapidated condition. At no time during the tenancy has the tenant sought to enforce the landlord's covenant, nor has he made any real complaint. My council has also not enforced the repairing covenant so far as the farmhouse is concerned.

1. Having slept on his legal rights relative to the original repairing covenant by the council has the tenant any rights relative to this covenant now ?

2. Having regard to the fact that my council did not put the farmhouse in good tenantable repair at the commencement of the tenancy, can they now enforce the tenant's covenant to keep the farmhouse in good and complete repair, order, and condition ?

3. Reference to legal proceedings or decided cases would be appreciated.

ACER.

Answer.

We doubt whether either party could, on the facts stated, enforce the covenants. We base this upon general principles of equity and upon s. 146 of the Law of Property Act, 1925. The facts seem distinguishable from those in *Uniproducts* (*Manchester*) *Ltd.* v. *Rose Furnishers, Ltd.* [1956] 1 All E.R. 146.

6.—Licensing—*Transfer : protection order—Licence holder convicted of offence—Application by wife for transfer—Convicted husband continuing to reside on premises—Whether wife fit and proper.*

Here is a brief point I should like your guidance upon. I am not setting it out in detail. Here recently we have had at least six licensees convicted in respect of offences under the Licensing, Gaming and Betting Laws. Within a few days of conviction the brewers have given notice applying for a protection order in favour of the wife in each case. These wives are all fit and proper persons—I mean by that that they are highly respectable and, indeed, have never in any instance been convicted. I am inclined to advise my justices (and I have looked at many cases in respect of this) that these wives are fit and proper persons. The chief constable, however, is prepared to argue that by reason of the fact that each wife is going to live on with her husband in the licensed premises after she becomes the licensee that she (the wife) is not a fit and proper person. The chief constable is of the opinion that because the convicted husband will be present in and upon the licensed premises, this will have some influence over the wife. I cannot accept this. If his argument is followed to its logical conclusion it would mean that the wife, in order to carry on as a licensee, following upon her husband's conviction, would have to separate from the husband, and this, I feel, is carrying matters too far.

I wish you would give me your views on this. The chief constable and myself have reached complete deadlock.

ORDA.

Answer.

Licensing justices may not grant an application to transfer a licence unless the transfer is to a person who is in their opinion fit and proper (Licensing Act, 1953, s. 21 (6)): a magistrates' court considering an application for a protection order is governed by the same rule (*ibid.*, s. 23 (1)). It is well settled that whether a person is " fit and proper " calls for wider consideration than mere grounds of good character, and it could be that evidence will make it impossible for the justices to form a positive opinion that any of the wives mentioned by our correspondent is fit and proper, having regard to the nature of the licensed business carried on and to all the circumstances.

But the chief constable's view, as indicated by our correspondent, seems to take the form of inviting the justices not to apply an unfettered discretion to the merits of each particular application, but to agree with him in a conclusion, backed by inference rather than evidence, which the justices will adopt as binding upon themselves as a general rule. A general rule of this kind is repugnant to licensing law (*cf. R.* v. *Rotherham Licensing JJ., ex parte Chapman* (1939) 103 J.P. 251).

7.—Magistrates—*Practice and procedure—Previous convictions—Mentioning when defendant present although prosecution not then in a position to prove them strictly.*

The usual procedure in magistrates' courts in this district, when an offender is due to appear who has previous convictions, is to obtain particulars of these previous convictions from the police of the district in which he or she resides. On the day of the hearing the alleged offender is seen by the officer in charge of the case and the previous convictions are put to him. If they are not admitted, they are not and cannot be put in because we are not in a position to prove them.

Quite recently a man appeared before the local magistrates' court charged with driving a motor lorry in a dangerous manner. He had quite a formidable list of previous convictions, including driving offences. He would not admit any. He was found guilty but no mention was made of his record.

It has since been stated by a person exceptionally well versed in law that the prosecutor could, and should, have informed the bench that he had good reason to believe that this man had a number of previous convictions recorded against him and asked for an adjournment in order to prove them.

It is suggested that such procedure may have the effect of forcing the offender to admit them and, even though the adjournment may be refused, the information that he has some previous convictions is known to the court.

Would such procedure be proper ?

KETAFOR.

Answer.

When the defendant is before the court we think it is quite proper for the prosecution to state that according to police records there are a number of previous convictions recorded against a man of the same name as, and believed to be identical with, the defendant. If the defendant denies that they relate to him the prosecution can ask for an adjournment, provided that there is a reasonable prospect that they will then be able to prove them strictly. The defendant's presence at the adjourned hearing can be ensured by his being remanded, on bail, to appear. If the convictions are then duly proved the costs so incurred can properly be awarded against the defendant. If they are not proved due allowance should be made, in fixing any penalty, to compensate the defendant for his loss of time.

If the prosecution have no hope of proving the convictions strictly, and the defendant denies them, the court must disregard them entirely.

8.—Music, etc., Licence—*Licensed premises—Hymn singing by customers—Whether licence required.*

In this town, certain licensees who do not hold a music and dancing licence are now regularly having hymn singing on Saturday evenings. So far as can be ascertained the hymn singing is initiated by customers and there is no question of any payment for piano playing and like.

Are they committing an offence, and if so under what Act, and who should take proceedings ?

ONES.

Answer.

It seems from the facts given that the situation corresponds with that in *Brearley* v. *Morley* (1899) 63 J.P. 582, in which it was held that no licence was necessary. The case mentioned should be compared with *McDowell* v. *Maguire* (1954) 118 J.P. 555, in which it was held that music was provided by the licence holder of a public house as part of the attractions of his house, and, therefore, a licence for public music, etc., was required.

9.—Probation—*Conviction of fresh offence by magistrates' court—Committal by that court to quarter sessions on bail under Criminal Justice Act,* 1948, *s.* 8 (4)—*Failure to appear at quarter sessions—Compelling attendance.*

A person in whose case a probation order was made by a court of quarter sessions was convicted and dealt with by a magistrates' court for an offence committed during the probation period. He was released on bail to appear before quarter sessions. He failed to appear at quarter sessions.

What, in your opinion, was the procedure for enforcing his appearance? Section 12 of the Magistrates' Courts Act, 1952, does not seem to apply. The quarter sessions at which he should have appeared concluded its business on the opening day and has been adjourned generally. If a bench warrant could have been issued by quarter sessions could the person when apprehended have been lawfully kept in custody until the next quarter session?

MOLUN.

Answer.

We can find no authority, and it appears that there is no specific provision dealing with this matter.

We hesitate to express a decided opinion as to any power which quarter sessions may have had to issue a bench warrant, as it seems always to be contemplated that such a warrant will be issued only after an indictment has been preferred and signed. We feel, however, that the High Court might well decide that any Court of Record has an inherent power to compel the attendance before it of a defendant who has entered into a recognizance to appear and has failed to do so.

A possible solution seems to be to treat the committal to quarter sessions under s. 8 (4) of the 1948 Act as exhausted by the defendant's failure to appear and for information to be laid, in pursuance of s. 8 (1), to secure the issue of a warrant under that subsection.

10.—Road Traffic Acts—Provisional licence holder—No L plates—*Burden of proof.*

I note with interest your answer to P.P. 9 at 120 J.P.N. 827.

I shall be most glad to have your further observations on this matter in the light of the paragraph dealing with s. 81 of the Magistrates' Courts Act, 1952, included on p. 93 of the 1956 *Stone* and its accompanying footnote.

ISOL.

Answer.

In the class of cases dealt with in the footnote to which our correspondent refers there is an allegation by the prosecution that the defendant did some act for which a licence or permit is required when he did *not* hold such a licence or permit. The footnote points out that if such a defendant seeks to prove that he *did* hold such a licence or permit the onus is on him.

As we pointed out in the answer to the P.P. referred to in the question the provisional licence holder's offence can be committed only by a person who holds such a licence, and the prosecution's allegation is not a negative one which puts on the defendant the burden of proving the positive if he can but is the positive one that the defendant, at the material time, *did* hold a provisional licence. To prove their case, therefore, the prosecution must prove this positive assertion which they make.

11.—Road Transport—*Motor vehicles owned by local authorities and companies—Name of council or company on vehicles.*

Section 76 of the Highway Act, 1835, imposes a duty on the owner of every waggon, cart, or other such carriage to paint or cause to be painted thereon his name and description, but this section was repealed by the Road Traffic Act, 1930, so far as it relates to motor vehicles and trailers. In common with other local authorities it is the custom to paint on the near side of the council's lorries and vans the name and address of the head of the department, and the committee on whose behalf the vehicle is being used. It has been suggested that this is unnecessary, nor is it necessary even to have painted on the vehicles the name of the corporation. Please advise whether it is a statutory requirement to have these particulars painted on the corporation's vehicle.

ARGAR.

Answer.

This is not a statutory requirement if these are motor vehicles, nor is it required (as are certain markings for some vehicles) by the Motor Vehicles (Construction and Use) Regulations, 1955.

12.—Road Transport—*Motor vehicles owned by local authorities and companies—Name of council or company on vehicles.*

Apart from public transport vehicles, what is the statutory authority (if any) for the name of the corporation or company to be exhibited on their motor vehicles? I am aware of the provisions of the Highway Act, 1835, s. 76, as to horse drawn vehicles, but this section was repealed as regards privately owned motor cars by the Road Traffic Act, 1930.

A.P.D.

Answer.

The query is not quite accurate in speaking of the extent of repeal of s. 76 of the Act of 1835. The schedule to the Road Traffic Act, 1930, removes the old requirement as respects all motor vehicles, not private cars alone. The Motor Vehicles (Construction and Use) Regulations, 1955, require certain markings on some vehicles, but not the owner's name. There is now no statutory or other requirement that the name shall be painted on the class of vehicles in question. We do not, however, think that any "authority" is required for doing so upon a public body's vehicles, any more than upon those of a trader.

13.—Theatre—*Grant of licence to "actual and responsible manager for the time being of the theatre"—Letting of licensed school hall to local society.*

In this division, theatre licences are granted by the justices and not by the local authority. There are no proper theatres, but a number of institutions have theatre licences enabling them to give public performances of amateur shows from time to time. One of these is a county secondary modern school. The theatre licence is held by the headmaster of the school and I believe the school puts on some sort of show in their assembly hall once or twice a year.

The village in which this school is situated has a dramatic society and they put on proper theatrical shows twice a year in the school assembly hall, by agreement with the headmaster or county education committee. A year ago, the education committee instructed the headmaster not to be responsible, under his theatre licence, for the amateur dramatic society's show, informing him that the amateur dramatic society, while being given leave to use the hall on the usual terms, must be responsible for getting their own theatre licence from the justices.

The view I took was that by s. 7 of the Theatres Act, 1843, no licence is to be granted to any person except the actual and responsible manager for the time being. The headmaster's licence was renewed annually; therefore he was the actual and responsible manager, in my view, for the hall for the whole of each year for which his licence was current. I did not see that s. 7 enabled him either to delegate his responsibility or to dissociate himself from it if an "occasional" licence were granted to somebody else; and that, therefore, being the licensee, he was the responsible manager whether he put on his own show, or allowed anyone else to put on a show; and accordingly that the "occasional" licence which was in fact granted to the dramatic society last year was unnecessary, and perhaps *ultra vires.*

I am of the opinion that my contention is supported by note (i) at the foot of p. 2285 in *Stone's* 88th edn., where it is stated that the licence must be granted to the actual responsible manager of the building and not to the company of players. In other words, in the present case, the headmaster, holding a licence on an annual basis, must take responsibility for all theatrical performances throughout the year, instead of only those produced by his own pupils.

The county education committee's contention was that if an outside body wished to use the hall for theatrical entertainment they must obtain their own licence. The result of this would be, of course, that for the time being there would be two separate licences in force.

OSTET.

Answer.

The law on this subject is far from clear: the Theatres Act, 1843, has not kept pace with the growth and development of social habits. We know that practice varies from place to place. Section 7 of the Act requires that the licence shall be granted to "the actual and responsible manager for the time being of the theatre"; but it is argued that this does not prevent the headmaster of a school, by contractual arrangement, divesting himself of actual management of the "theatre" for the time being in favour of another: actual and responsible management, so to speak, goes with the letting.

In the present state of the law we are not disposed to say that this is wrong. There is nothing in the Theatres Act, 1843, to prohibit two licences being held in respect of the same theatre; nor, particularly where the "theatre" is part of a larger unassociated unit such as a school, the grant of a succession of licences to a succession of people each of whom is "the actual and responsible manager for the time being."